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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 1, 1994

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William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

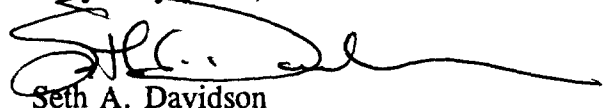
Re: Ex Parte Notice
Docket No. 92-266

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise that on Friday, July 1, 1994, John Rigas, Chairman, President and CEO of Adelphia Cable Communications, Inc., Michael Rigas, Senior Vice President of Operations, and the undersigned met with Commissioner James H. Quello and Maureen O'Connell of his staff to discuss the "going forward" rate adjustment issues raised in the Fifth Notice in the above-referenced docket. Attached hereto are two copies of written materials provided to the participants in the meeting.

If there are any questions regarding this matter, please communicate directly with the undersigned.

Very truly yours,


Seth A. Davidson

cc: Commissioner Quello
Maureen O'Connell

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Chief, Cable Services Bureau
Federal Communications Commission
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Dear Ms. Jones:

On August 30, 1993, Adelphia Communications Corporation, through its franchised affiliates and subsidiaries operating cable television systems and doing business as Adelphia Cable Communications ("Adelphia"), informed its subscribers that it was instituting extensive a la carte offerings on the great majority of its cable systems. Adelphia believes that most franchising authorities and subscribers find the alternatives presented by a la carte offerings to be very beneficial, and that its a la carte offerings were introduced in total compliance with applicable law. Indeed, in the nine and one-half months since Adelphia introduced its new a la carte service offerings, only two communities -- Metropolitan Dade County, Florida and Bucyrus, Ohio -- have come to the Commission with questions about those a la carte offerings.¹

While Dade County and Bucyrus are the only communities which have raised questions regarding Adelphia's a la carte service offerings, the pendency of Commission action regarding those two situations is creating enormous uncertainty regarding the status of Adelphia's unchallenged a la carte offerings in numerous other communities. This uncertainty has been greatly exacerbated by the Commission's unexpected announcement in March 1994 of fifteen "interpretive guidelines" that apparently are to serve as criteria for assessing the legitimacy of a la carte service offerings.

Adelphia hereby requests clarification regarding a number of issues raised by the Commission's new guidelines for assessing a la carte service offerings. As indicated, the announcement of fifteen criteria for judging a la carte service offerings came as a surprise to Adelphia. Both at the time Adelphia introduced its a la carte service offerings and at the

¹Adelphia has responded to the concerns raised by Dade County and Bucyrus. See Adelphia's Response to Letter of Inquiry (LOI 93-42), filed January 11, 1994; Adelphia's Opposition to Petition for an Order to Show Cause (CSR-4096-F), filed November 12, 1993.

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time Adelphia responded to the concerns about those offerings raised by Dade and Bucyrus, the Commission had said that it would employ a two-pronged test in evaluating a la carte service offerings. Under this test, which was first announced in the Commission's April 1993 Rate Order, it appeared clear that where a cable operator took cable services from an existing tier and offered them both on an a la carte basis and in a discounted package, the services would be deemed unregulated a la carte services if: (1) the price of the package did not exceed the sum of the individual charges for each component service, and (2) the cable operator continued to provide the component parts of the package to customers separately as a realistic option in addition to the package offering.¹

Pursuant to the Commission's pronouncements, Adelphia announced its current a la carte service offerings on August 30, 1993. Adelphia's price for the package of its a la carte offerings is below the total price of the services purchased individually; accordingly, Adelphia's offerings meet the Commission's first criterion. In addition, Adelphia offers each and every a la carte service in the package separately and apart from the package. These per channel offerings provide Adelphia's customers a "realistic choice" to purchase channels individually;² in fact, Adelphia's customers may purchase a large number of channels or channel combinations on an individual basis and still save substantially over the package price.³ Accordingly, Adelphia's offerings also meet the Commission's second criterion.

The instant request for clarification is aimed at eliminating the uncertainty that Adelphia now faces with respect to its a la carte service offerings. In particular, Adelphia seeks clarification of the fifteen criteria announced in the Second Reconsideration Order. For example, as discussed in greater detail below, a number of these criteria appear to throw into jeopardy the unregulated status of any a la carte service offerings that consist of channels previously offered only as part of a tier, even though the Commission's prior

¹Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92-266 ("April 1993 Rate Order"), FCC 93-177, 8 FCC Rcd 5631, ¶¶ 327-328 (rel. April 1, 1993).

²Id. at ¶ 328, fn. 808.

³In this regard, since January 1994, the number of Adelphia subscribers that has chosen to subscribe to one or more individual a la carte services on an individual basis, has increased approximately 14 percent, which shows clearly that subscribers are aware of their options and are exercising them.

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pronouncements had indicated that nothing in the Cable Act requires the imposition of restrictions on the movement of a channel from a regulated tier to unregulated a la carte status.⁴

Adelphia also requests clarification of whether the fifteen criteria will be applied retroactively to a la carte service offerings established prior to the September 1, 1993 effective date of the Commission's rate rules and, if so, how such liability will be measured. For example, is there a "statute of limitations" for challenges to a la carte service offerings; does Adelphia face potential refund liability for the a la carte package, for the system's regulated basic tier, for neither, or for both?

Finally, Adelphia requests guidance as to whether and how it may "cure" or restructure its existing a la carte service offerings to mitigate the impact that might otherwise follow from an adverse ruling regarding the status of such offerings. How are customers who currently have chosen individual services to be treated if the package is deemed subject to regulation? Is the current structure "frozen," or is Adelphia able to modify the offerings in the future?

As the Commission knows, the cable industry, faced with changes in the Commission's rules, is in the process of restructuring rates and services for the second time within less than a year. Answers to the questions raised above, including clarification of the fifteen factors, is of critical importance to companies such as Adelphia as they undertake this latest round of restructuring. The Commission has indicated that its case-by-case rulings on some fifty-plus letters of inquiry that are currently pending before the agency will provide some guidance regarding the assessment of a la carte service offerings. While some of these rulings may be issued within the next few weeks (see, e.g., Century Cable of Southern California, DA 94-512, rel. May 17, 1994), Adelphia is concerned that the Commission's resolution of the letters of inquiry will not provide the level of certainty and guidance needed. Adelphia cannot possibly know whether its new rate and service structure is in compliance with the Commission's rules if it does not know the status of its old rate and service structure. Even more importantly, Adelphia cannot make the kinds of decisions needed to address growing competition from other multi-channel video providers without

⁴See April 1993 Rate Order, supra at ¶ 440, fn. 1105. See also First Order on Reconsideration in MM Docket No. 92-266, FCC 93-428, ¶ 35 (rel. Aug. 27, 1993) ("restructuring program offerings to provide more a la carte services is not per se undesirable").

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clear and certain guidance from the Commission on the issues raised herein. Consequently, expedited consideration of this request for clarification is urgently requested.

Specific Questions Regarding The 15 Criteria For Evaluating A La Carte Service Offerings.

The Commission has separated its fifteen criteria for evaluating a la carte service offerings into two groups: 5 criteria that the Commission says indicate that an a la carte offering will be deemed unregulated by the Commission, and 10 criteria that the Commission says indicate that an a la carte offering is subject to regulation. Specific questions regarding each of these criteria are set forth below:

1. The operator had offered (or begun to explore offering) a la carte packages consisting of non-premium channels prior to rate regulation.

A. Is This Criterion Satisfied Where A La Carte Services Were First Offered Prior To September 1, 1993 And Prior To The Filing Of FCC Forms 328?

When Adelphia introduced its current a la carte offerings on August 30, 1993, it was prior to the effective date of the Commission's rules governing its basic and tier rates. Moreover, over nine months later, Adelphia's operations in many of its franchised communities remain unregulated, since franchising authorities have elected not to file FCC Forms 328 and subject Adelphia's basic service tier to regulation. Accordingly, it appears that Adelphia's a la carte offerings in every instance were introduced prior to the date on which Adelphia's rates were being subject to regulation. Adelphia asks the Commission to clarify whether in these circumstances this criterion is satisfied.

B. Is This Criterion Satisfied Where An Operator Has Offered A La Carte Packages Through Its Home Satellite Service?

Adelphia Home Satellite Service ("AHSS") has offered its TVRO subscribers a la carte service options similar to those now offered its cable customers for three years. A la carte service offerings in the TVRO market have been very successful, and Adelphia could not ignore these results, either from its own TVRO company or other multi-channel video service competitors. Under these circumstances, Adelphia asks that the Commission clarify whether Adelphia can be deemed to have begun offering services on an a la carte basis prior to regulation (or to have begun to explore such offerings).

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2. The operator has conducted market research that suggests introducing an a la carte package would be profitable, other than as a means of evading rate regulation.

A. Is This Criterion Satisfied Where An Operator's Home Satellite Service Has Successfully Marketed Extensive A La Carte Offerings And Packages For Several Years?

Adelphia's experience with AHSS, its home satellite service, represents the best kind of market research that an operator could conduct. This experience showed Adelphia that while the majority of its TVRO subscribers take services in packages rather than on an individual basis, certain subscribers will balk at higher priced groups of services, which naturally result from the inclusion of more channels, and will instead choose to purchase individual services if given the option of doing so.⁵ Adelphia's experience has shown that subscribers will opt for individual channel subscriptions rather than packages even where the package may provide a better economic value on a per channel basis.

Adelphia also has had experience, over the years, in adopting numerous other marketing strategies, including low priced "lifeline basic," multiple tiers of service, discounted pay movie packages, multiplexing, etc. These marketing approaches became successful over time because, Adelphia believes, they offered existing subscribers more selection and gave non-subscribers greater reason to subscribe. Accordingly, Adelphia's experience in several contexts has suggested that the introduction of its new a la carte and package offerings would help attract and keep customers.

Adelphia respectfully requests clarification as to the significance of its experience, as described above, in meeting the market research criterion.

⁵Adelphia Home Satellite Service has over 10,000 subscribers currently who choose to receive a package of services. It has over 1,000 subscribers currently who choose to receive a single service. And it has thousands of subscribers currently who choose to receive a number of offerings not sold in packages.

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B. What Is The Significance Of The Fact That Competing Multi-Channel Video Service Providers Offer Virtually Every Type Of Service On A Per Channel Basis And In Packages?

Adelphia Home Satellite Service is not the only home-satellite program supplier currently offering services on an a la carte basis, both individually and in packages. In fact, a sea of home satellite dish program suppliers, with which Adelphia competes, have historically offered similar types of services and service packages. Adelphia respectfully requests that the Commission clarify the significance of the experience of competing service providers in the context of the market research criterion.

C. May An Operator Make Use Of Market Research Undertaken By Other Companies?

"Premium" movie services, such as HBO, Showtime, and others have undertaken consumer research as to how consumers select video providers. This research has shown that the price/value assessment that each consumer makes in selecting a video provider is complex. Other research has shown that consumers have a clear preference for purchasing programming from a single source. Based on its knowledge of this research, Adelphia has concluded that, as competition from DBS, TVRO and telephone video dialtone matures, some subscribers will want, and Adelphia will need to provide, the ability to subscribe only to channels and services that interest them (albeit with a higher per channel rate). Adelphia believes that, if it offers consumers more options, it will help retain and increase customers and/or prevent them from becoming basic-only subscribers.

Adelphia requests clarification as to its whether the utilization of market research such as that described above satisfies this criterion.

3. The subscriber is free to select which channels will be included in the package.

A. Is This Criterion Satisfied Where Every Channel Except Those Included In The Basic Service Tier Is Offered A La Carte?

Adelphia's subscribers are offered the opportunity to purchase on a per channel basis every channel that Adelphia offers, other than those included on the basic tier. There is no minimum number of services that must be purchased nor are there any limitations on the ability of a subscriber to fashion his or her own "package." Indeed, Adelphia decided to offer virtually every channel it had a la carte in order to ensure that no service that met a

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subscriber's interests could not be purchased individually. Had Adelphia only selected a few channels from the tier to offer a la carte, subscribers would have been precluded from the broad selection which this factor seeks to maximize.

Accordingly, Adelphia seeks clarification whether its efforts to maximize consumer choice by offering every non-basic channel on an a la carte basis satisfies the above criterion.

4. Subscribers are given notice that fully discloses their options, as well as fully discloses the total price (including related equipment charges), associated with exercising any of these options.
 - A. Is This Criterion Satisfied Where, Prior To September 1, 1993, An Operator In Accordance With The Commission's Statements, Gave Subscribers And Franchising Authorities Written And On-Screen Notifications?

As the Commission is aware, it belatedly changed the effective date of its rate regulations, moving that date up one month from October 1, 1993 to September 1, 1993. Recognizing that this accelerated implementation schedule would make it difficult for cable operators to notify their subscribers of the changes in service and rates being made to meet the requirements of the new rules, the Commission stated expressly that a cable operator could satisfy any applicable notice requirements by running appropriate notifications in newspapers and on-screen.⁶ Accordingly, Adelphia, on August 30, 1993, published newspaper notifications and ran on-screen crawls that informed subscribers, franchising authorities and any other interested persons that Adelphia was now offering all services other than those included in the basic tier on an individual basis. In addition, Adelphia previously had informed its franchising authorities by letter of the manner in which Adelphia would be offering its services.

Do these actions satisfy the notification criterion?

⁶Deferral Order, FCC 93-304, 58 Fed. Reg. 33,560 (June 18, 1993).

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B. Is This Criterion Satisfied Where An Operator Has Provided Information On The Availability And Price Of Every Service And Has Undertaken Continuing Efforts At Education?

Adelphia also provided its subscribers, via a separate mailing shortly after August 30, 1993, with detailed information describing and depicting in chart form the contents and price of its basic tier service and equipment, the availability and price of all other services on a per channel basis, and the availability and price of its package offering. Adelphia has also undertaken continuing efforts to educate its subscribers as to the specifics of its service offerings. In this regard, Adelphia's permanent marketing literature and rate cards fully apprise subscribers of all service and pricing options.

Accordingly, Adelphia requests clarification whether by engaging in these additional efforts following August 30, 1993, it satisfied the notice requirement of this criterion.

5. An insignificant percentage or number of channels in the package has been removed from regulated tiers.

A. What Is The Difference Between This Criterion And Several Other Criteria Articulated By The Commission?

It appears that the Commission has spotlighted the number of channels unbundled from regulated tiers and offered on an a la carte basis no less than four times in its fifteen factors. These criteria include: (1) whether an insignificant percentage or number of channels in a package has been removed from regulated tier; (2) whether a significant percentage or number of channels in a package was removed from regulated tiers; (3) ~~whether channels taken from regulated tiers have not traditionally been marketed a la carte;~~ and (4) whether an entire regulated tier has been eliminated and turned into an a la carte package. If these are separate and distinct criteria, Adelphia does not understand the differences between and among them in assessing its a la carte service offerings. Adelphia requests that the Commission clarify the relationship of these factors.

B. How Is The Criterion Reconciled With Section 625(d) Of The Cable Act?

Section 625(d) of the Cable Act provides as follows:

Notwithstanding subsections (a) and (b) [establishing procedures for modification of franchise obligations] a cable operator may take such actions to rearrange a particular

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service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under Section 623.⁷

Thus, the Cable Act provides a cable operator with authority to relocate services and to offer them a la carte. Adelphia began to offer all of its existing channels (other than those required by statute to be included on the basic service tier), on an a la carte basis on August 30, 1993. The effective date of the Commission's rates regulating cable rates was September 1, 1993. By definition, any service tier from which Adelphia relocated services was not (nor, in many cases, is it today) regulated at the time the services were so offered. Accordingly, Adelphia requests clarification as to how the Commission's 15 criteria operate within the parameters of the language of Section 625 of the Cable Act. It seems clear that the manner in which Adelphia relocated services is "otherwise offering" services, just as the statute states, and, indeed, is precisely the type of innovative offering that Congress always has intended to allow.

C. What Is The Relevance Of The Fact That Other Multi-Channel Video Service Providers Offer Virtually Every Type Of Service On A Per Channel Basis And In Packages?

Other multi-channel video program service providers, such as the TVRO industry, currently offer virtually all of the services found in Adelphia's a la carte offerings. These services typically are available from these other providers both on a per channel basis and in a la carte packages organized by subject matter (e.g., sports, music, network, news).⁸ Adelphia's subscribers now have the option of creating similar packages (for prices at least comparable to those paid by TVRO customers). It obviously is crucial that Adelphia be given precise and definitive guidance regarding the extent to which it can prepare for and meet competition by offering on an a la carte basis services previously available only as part of a tier; accordingly, Adelphia requests clarification to what constitutes a "significant" number or percentage for purposes of this criterion.

⁷47 U.S.C. § 545(d) (emphasis added).

⁸See Attachment I.

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6. The introduction of the a la carte package results in avoiding rate reductions that otherwise would have been required under the Commission's rules.

A. Is The Only Way To Satisfy This Criterion To Treat Unregulated Channels As Regulated Channels?

How is this criteria to be applied? Under the Commission's April 1993 benchmark approach, the permissible benchmark rate per channel is based, in part, on the number of regulated channels carried as of the initial date of regulation. Inherently, a cable operator who is offering channels a la carte will have a higher per channel benchmark rate under the Form 393 benchmark table than would be the case if those channels were being offered on a regulated tier. At the same time, however, by offering services on an a la carte basis, the operator has provided its customers with additional choice and has opened itself to the possibility of reduced revenues as subscribers opt for individual channels rather than packages. Moreover, if operators are required to set the rate for a package of a la carte channels at or below the per channel benchmark rate, it would have the effect of regulating the rates charged for the individually-offered (and thus unregulated) channels. Indeed, even if a cable operator established its rate for an a la carte package at or below the regulated level, any subsequent increase in the a la carte package or per channel prices above the price cap also could be viewed as "avoiding rate reductions that otherwise would have been required under the Commission's rules."

Adelphia set its rate for regulated service under the permissible benchmark rate. Moreover, its new service and rate structure complied with the Commission's "rate freeze." Adelphia requests that the Commission clarify how its actions would be assessed under this criterion.

7. A significant percentage or number of channels in the package were removed from regulated tiers.

A. What Is The Difference Between This Criterion And Several Other Criteria Articulated By The Commission?

As noted earlier, it appears that the Commission has spotlighted the number of channels being moved from regulated tiers to a la carte no less than four times. If these are separate and distinct criteria, Adelphia does not understand the differences between and among them.

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8. The package price is so deeply discounted when compared to the price of an individual channel or the sum of the prices of the individual channels, that it does not constitute a realistic set of service choices because subscribers will not have any realistic options other than subscribing to the package.

A. What Is An Appropriate Discount?

Cable operators today offer package discounts for premium service packages of up to 50% and more. The packages available to TVRO subscribers offer substantial discounts as well. Adelphia itself offers discounts to its home satellite service customers of up to 30%, depending upon the services selected.

Unaffiliated satellite services have the same or a higher level of discounts. HBO's "Build A Pak," if purchased individually, would cost \$449.55 a year, but is discounted almost 40 percent, while "Superpak Plus," totalling \$539.55 per year, is discounted over 40 percent.

Adelphia seeks guidance as to whether its a la carte package discount complies with this criterion. Adelphia's discount to its cable subscribers in Dade County is approximately 16.7%. The discount is calculated as the percentage difference between the a la carte package price and the total price of all individually priced services. While the Commission's criterion does not suggest that equipment cost should be calculated in determining the discount, such calculations would still produce a discount no greater than that given for cable network packages by TVRO providers and for premium service packages given by cable operators.

Finally, Adelphia notes that it offers its a la carte services at varying prices. As a result, the number of services a subscriber can take and still pay less than the discounted full package price will vary depending on which services the subscriber chooses. In this light, Adelphia seeks clarification as to whether the "discount" can be measured in terms of the percentage of channels a subscriber must be able to take of all available a la carte channels and still pay less than the full package price.

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9. **The channels taken from regulated tiers have not traditionally been marketed a la carte.**

A. **What Is The Basis For Restricting A Cable Operator's Ability To Create New A La Carte Service Offerings Using Channels Not Traditionally Offered On A Per Channel Basis?**

Congress clearly recognized that cable operators would offer on an a la carte basis channels that have not traditionally been marketed on a per channel basis. In particular, the House Report accompanying the 1992 Cable Act stated:

Under this section [section 623]; the only cable services potentially not subject to the Commission's regulatory authority would be services traditionally offered on a stand-alone, per-channel basis (premium channels like HBO or Showtime) or other programming that cable operators choose to offer on a per programming service, channel or pay-per-view basis.⁹

While the House Report goes on to indicate that the FCC is empowered to scrutinize whether restructuring channels could constitute an evasion of rate regulation, it is clear that Congress did not regard the act of shifting non-premium channels to a la carte as an evasion in and of itself.¹⁰ In a highly volatile and changing video marketplace, there is no indication that Congress viewed the preservation of traditional service offerings as a standard most likely to promote the public interest.

The Commission has itself echoed these same sentiments. In particular, prior to ~~September 1, 1993, the Commission repeatedly signalled the cable industry that moving or~~ "unbundling" services from regulated tiers and offering these services on an a la carte basis enhanced consumer choice and, therefore, promoted the goals of the Cable Act.¹¹ Adelphia seeks clarification of the above criterion in light of the Commission's prior acknowledgement

⁹H.R. Rep. No. 628, 102d Cong., 2d Sess. 79 (1992).

¹⁰The House Report reiterated elsewhere the Congressional intent that "other [non-premium] programming that cable operators choose to offer on per channel or per-view basis are not subject to regulation." *Id.* at 80.

¹¹See, e.g., First Reconsideration Order, *supra* at ¶ 35 and fn. 61.

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that "unbundling" services to allow subscribers to select only those channels that they wish to receive is in the public interest and should be encouraged.

B. Under What Circumstances Is A Channel Deemed To Have Been Or Not Have Been Traditionally Marketed A La Carte?

With rare exceptions, channels that cable operators move from a tier, by their very nature, will not have been "traditionally" marketed on a per channel basis on the cable system in question. At the same time, other multi-channel video service providers such as TVRO service providers (and DBS providers shortly) offer on an a la carte basis virtually all of the same services offered by cable operators on tiers. Video dial tone applicants claim they have the same intent. If cable operators are to give the same level of choice to their subscribers, they cannot be limited by their traditional practices.

Accordingly, Adelphia requests that the Commission define when a channel will be deemed to have been "traditionally" offered a la carte. Can Adelphia consider channels to have been traditionally offered a la carte if both its competitors and its own home satellite service were offering such channels on an a la carte basis prior to September 1, 1993 or does this criterion freeze a cable operator's existing service structure?

10. An entire regulated tier has been eliminated and turned into an a la carte package.

A. Does This Criterion "Freeze" The Regulated Status Of A La Carte Services Previously Offered On A Tier?

~~The unfair inference from this criterion appears to be that a regulated tier restructured to offer its component services on an a la carte basis will retain its regulated character ad infinitum.~~ In other words, if a group of channels was offered only as part of a tier on April 1, 1993 (the "grandfathering" date in the Commission's Second Reconsideration Order) and there is now an option to purchase the channels either individually or as a discounted package, are the services always to be considered as if they are offered as part of a regulated tier? Adelphia asks that the Commission clarify these issues.

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B. How Does This Criterion Relate To The Commission's Determination That Collapsing Cable Programming Service Tiers Into The Basic Tier May Be An Evasion?

Adelphia is uncertain as to why unbundling an entire tier and offering its component services on an a la carte basis is viewed negatively by the Commission. In its Third Order on Reconsideration, the Commission held that collapsing the cable programming service tier into the basic tier may be an evasion because it eliminates subscriber choice.¹² Adelphia requests clarification as to why eliminating that same cable programming tier, not by collapsing it into the basic tier but rather by letting subscribers buy any channel individually, is also evidence of an evasion? If the cable operator selects a few existing channels for a la carte but not the whole tier and maintains a smaller cable programming service tier which then must be purchased before any of the a la carte services may be purchased, does this reduction in consumer choice constitute an evasion?

11. The subscriber must pay a significant equipment charge to purchase an individual channel in the package.

A. What Is A "Significant" Equipment Charge? Is "Significant" Calculated On A Per Household Or Per Set Basis?

In offering all of its non-basic services on an a la carte basis, Adelphia makes use of both interdiction and scrambling technology. Adelphia's non-"premium" services are offered through the use interdiction technology; a subscriber wishing to receive some, but not all, of such services must be provided with an addressable interdiction unit. Adelphia has priced both converter equipment (used to receive scrambled premium signals) and interdiction equipment (used to receive interdicted signals) at or below cost as calculated under both Forms 393 and 1205. Adelphia believes that its subscribers are not paying "significant" equipment charges where such equipment is priced at or below cost. With regard to its interdiction equipment, Adelphia also does not impose any installation charge for installation of the interdiction box; for this reason as well, Adelphia believes that its subscribers are not paying a "significant" equipment charge. Again, Adelphia requests the Commission's clarification on whether equipment and related installation priced at or below cost can be a negative as to the regulated status of service associated with the equipment.

¹²Third Order on Reconsideration in MM Docket No. 92-266, FCC 94-40, ¶ 134 (rel. March 30, 1993).

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B. What Is The Relevance Of Significant Cost Savings That The Choice Of Particular Equipment Provide To Most Subscribers?

Adelphia has chosen to utilize interdiction and scrambling technologies because it makes sense in light of expected customer penetration levels for various services and because, in light of the type and the amount of equipment utilized by the average Adelphia subscriber, it minimizes subscriber's equipment costs.

With regard to Adelphia's interdiction equipment, only one interdiction unit serves all television sets in a subscriber's home; thus, there is no "per outlet" charge to the subscriber. Given that the Commission's rules have largely reduced monthly service charges for additional outlets, it is likely that more and more subscribers will elect to receive cable on more than one television set. Because each connection will require a separate converter, addressable technology could be far more expensive than interdiction, even for homes taking individual channels.

In addition, unlike addressable technology, equipment costs attributable to the use of interdiction technology are imposed not on all subscribers, but only on those subscribers whose purchase decision requires that some signals be secured. Adelphia's use of interdiction equipment therefore minimizes equipment charges, by avoiding equipment charges for subscribers who choose not to customize on a per-channel basis. Looked at another way, if Adelphia utilized only scrambling technology, any allegedly lower monthly per outlet charge attributable to addressable descrambling technology would have to be borne by a greater number of subscribers.

Adelphia respectfully requests that the Commission clarify the import of these types of considerations in determining whether or not a particular equipment cost is "significant."

C. What Is The Relevance Of The Commission's Equipment Compatibility Rules?

The interdiction technology utilized by Adelphia is the technology which is expressly encouraged by the FCC recent equipment compatibility order.¹³ This equipment allows the signals to pass "in the clear" from the headend to the subscriber's television set. As the Commission itself has noted, passing signals "in the clear" means that subscribers may utilize

¹³See First Report and Order in MM Docket No. 93-7, FCC 94-80, ¶ 31-46 (rel. May 4, 1994).

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features and options such as remote control, picture to picture, more convenient video recording and other consumer electronics options. There is no need for a subscriber to lease multiple descramblers from a cable operator at a per unit rate in order to retain these functions. Similarly, a subscriber need not purchase decoder bypass switches, universal remote controls, or other supplemental equipment which is normally required to achieve a similar level of compatibility in systems employing scrambling technology. Indeed, the costs of providing such service via interdiction technology for most subscribers may be substantially less than other technologies.

Again, Adelphia respectfully requests that the Commission clarify how these considerations relate to a determination of whether an equipment charge is "significant."

12. The subscriber must pay a "downgrade charge" (an additional charge) to purchase an individual channel in the package.

A. Is This Criterion Satisfied Where An Operator Charges No Fee To Downgrade From A Package To Individual Channels?

Adelphia charges no fee to downgrade from the full package to individual channels. Consistent with Commission regulations, Adelphia does impose a \$2.00 transaction charge each time a subscriber taking individual channels wishes, after he/she has initially selected services, to add or substitute any services. This \$2.00 charge applies regardless of the number of services added or substituted. Adelphia does not impose a charge if a subscriber receiving individual services wishes to receive a lesser number of individual services.

Adelphia requests that the Commission clarify whether in these circumstances this criterion is satisfied.

13. The a la carte package includes channels that were removed from lower tiers of channels, so that subscribers to those lower tiers are required to buy one or more intermediate tiers in order to receive the same channels.

A. Does This Criterion Contradict Other Criteria Articulated By The Commission?

Adelphia notes at the outset that it has not engaged in the type of conduct which it understands the Commission to be addressing via this criterion. However, it appears to

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Adelphia that this factor largely contradicts the philosophy inherent in criterion number 10, which examines whether an operator has eliminated an entire regulated tier and turned it into a la carte services. The purest way to avoid any form of buy-through problem or barrier is to offer all services a la carte. Accordingly, Adelphia eliminated its cable programming services tier and, therefore, the only tier required to be purchased, in order to have a la carte options, is the basic tier which must be purchased under the Cable Act.

Adelphia respectfully asks the Commission to clarify the operation of this criterion vis-a-vis other criteria articulated by the Commission.

14. Subscribers are automatically subscribed to an a la carte package through, for example, such means as negative option billing.

A. If A Cable Operator Did Not Engage In A Prohibited Negative Option, As Defined By The Commission, Is This Criterion Satisfied?

As the Commission is well aware, the date for cable operators to restructure program services and rates was changed several times. As noted earlier in this letter, the deadline for restructuring was shortened from October 1, 1993 to September 1, 1993.

No cable operator had enough time to contact individually each subscriber before the September 1, 1993 rate and service restructuring contemplated by the new rules took place. Recognizing this, the Commission allowed operators to provide notice of restructuring by newspaper advertisements and announcements on TV rather than by a written 30 day notice in subscriber bills. The Commission also made clear that a revenue-neutral restructuring in which subscribers continued to receive the same services they had previously received did not raise "negative option" concerns.¹⁴ Indeed, had affirmative marketing been mandated, Adelphia would have had to cease providing non-basic services until it had heard from its subscribers -- an approach that would have resulted in large numbers of subscribers losing existing services that they continued to want and, in some cases, had paid for by advance billing. In the case of Adelphia's restructuring, subscribers could keep receiving the same

¹⁴See, e.g., April 1, 1993 Rate Order, *supra* at ¶ 441 and fn. 1105 (restructuring tier "will not bring the negative option billing provision into play if subscribers will continue to receive the same number of channels"); First Order on Reconsideration, *supra* at ¶ 87, fn. 127 (noting that "Commission has ruled that cable operators may engage in revenue-neutral tier restructuring without violating the negative option billing procedure").

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number of channels with no price increase or obtain significant savings by choosing individual a la carte services.

Accordingly, Adelphia requests the Commission to clarify whether this criterion is satisfied, if an operator did not engage in a prohibited negative option under Federal law, as defined by the Commission prior to September 1, 1993.

15. The affected programmers object to the restructuring of their services into a la carte packages.

A. What Does The Commission Define As An "Objection?"

Adelphia requests clarification as to what the Commission intends to define as an "objection," apart from a clear and uncontested contractual violation in relocating a channel in an a la carte format.

Virtually all advertiser-supported cable programmers, given the choice, would prefer to be carried on basic or on a cable programming service tier rather than offered as part of an a la carte package. Even the Disney Channel, Madison Square Garden, and other higher priced channels, which rely far less on advertising, would prefer the higher penetration that tiers historically produce.

As described herein, this agency has provided little certainty as to how many existing channels can be included to allow successful marketing of an a la carte package and what is the permissible level of price discounting. In this uncertain regulatory environment, any cable programmer would be very concerned with the positioning of its service in other than its historical tier placement where subscriber penetration has been high. Once the Commission provides greater certainty, it is not clear why the objection of any party (including local officials, a programmer, or a competitor) should be relevant if the service offerings are contractually permitted and benefit the consumer.

Accordingly, Adelphia requests that the Commission clarify how it intends to define an "objection" on the basis of an explicit program violation.

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CONCLUSION

As Adelphia noted at the outset, it cannot make final decisions on (1) the appropriateness of its service offerings and rate structures; (2) the election of benchmark or cost of service treatment; and (3) the necessity for, and the best manner in which to accomplish, service or rate changes, until the Commission provides definite guidance.

Adelphia requests clarification as to (1) what constitutes permissible conduct under each of the 15 interpretive criteria announced on March 30, 1994 and how those criteria relate to the two-pronged test which Adelphia assumed governed its actions when it restructured its service offering prior to September 1, 1993; (2) whether the application of the 15 criteria will be used retroactively to determine a cable operator's rates for some or all of its service offerings and, if so, whether an operator faced with such retroactive application of the new standard will be permitted to "cure" its a la carte service offering; and (3) whether an operator who is found to have created an improper a la carte offering under the 15 criteria will be permitted to re-elect between the cost-of-service and benchmark methodology to justify its rates and any other specific methods by which cable operators can prospectively "cure" or restructure an existing a la carte service to meet the rules going forward.

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Please contact us if there are any questions with regard to the clarifications that Adelphia is seeking.

Respectfully submitted,

A handwritten signature in cursive script, reading "Randall D. Fisher".

Randall D. Fisher
John Glicksman
Its Attorneys

cc: John Rigas
Michael Rigas
Charles S. Walsh, Esq.

ATTACHMENT I

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PLUS PACK 27 Channels \$367.35 yrly.

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WTBS	14.50
TNT 3	19.95
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The Disney Channel	82.00
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Comedy Channel	\$.95	\$ 8.40	Movie Channel		
CNBC	\$.59	\$ 6.40	Encore Channel		
MTV/VH1	\$ 1.95	\$ 11.40	HBO/MAX		
Cartoon Network	\$ 3.95	\$ 33.40	Show/TMC		
The Discovery Channel	\$.59	\$ 6.40	Show/FLIX		
CNN Network	\$.59	\$ 6.40	TMC/FLIX		
CNN Headline News	\$ 1.95	\$ 11.40	Show/TMC/FLIX		
TNT	\$ 2.39	\$ 18.40	Sports Channels		
CMTV	\$ 1.95	\$ 23.40	ESPN 2		
Arts & Entertainment	\$.59	\$ 6.40	ESPN		
Bravo	\$.95	\$ 8.40	Prime Network		
AMC	\$.95	\$ 6.40	SSN		
The Nashville Network	\$ 1.95	\$ 11.40	Sports Channels		
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WSBK/WWOR (Boston, NJ)	\$ 2.95	\$ 23.40
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A & E.....0.85	HBO7.45	SPICE2.....8.70
BRAVO0.88	INTERNATIONAL.....2.75	SUR SPANISH9.95
CARTOON.....0.68	KTLA1.20	TNT.....1.95
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CMTV0.50	MIDWEST*.....6.95	USA**.....0.85
CNBC.....0.79	MTV & VH12.75	WEATHER.....0.85
CNN/HEADLINE2.00	MOVIE CHANNEL7.45	WGN-CHICAGO.....1.20
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WOR & WSBK.....2.60	WOR, WSBK & KTLA.....3.45
WGN, WPIX & KTVT.....3.45	WGN, WPIX, KTVT & KTLA.....3.75
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